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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KEITH CARROLL, individually and on
behalf of all others similarly situated,

Plaintiff.

v.

NEWELL BRANDS INC., a Delaware corporation, and DOES 1 through 25, inclusive,

Defendants.

Case No. 2:23-cv-00105

CLASS ACTION COMPLAINT FOR VIOLATION OF THE VIDEO PROTECTION PRIVACY ACT

I. INTRODUCTION

Whenever someone watches a video on www.gracobaby.com (the “Website”), Defendants secretly report all the details to Facebook: the visitor’s identity, the titles watched, and more. Why? So Facebook can bombard the person with *more* ads urging the person to buy products from Defendants.

As shown below, Defendants' actions violate the Video Privacy Protection Act ("VPPA"). As such, Defendants are liable to each class member for \$2,500 and related relief.

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Video Privacy Protection Act (“VPPA”), a federal law.

2. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the acts and events giving rise to the class claims occurred in this District.

3. Defendants are subject to personal jurisdiction because they have sufficient minimum contacts with California and do business with California residents.

III. PARTIES

4. Plaintiff is a consumer advocate who watched a video on The Website.

5. Defendant is a Delaware corporation that owns, operates, and/or controls the Website.

6. The above-named Defendants, along with their affiliates and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

1 7. Plaintiff is informed and believes that at all relevant times, every Defendant
 2 was acting as an agent and/or employee of each of the other Defendants and was acting
 3 within the course and scope of said agency and/or employment with the full knowledge
 4 and consent of each of the other Defendants, and that each of the acts and/or omissions
 5 complained of herein was ratified by each of the other Defendants.

6 **IV. FACTUAL ALLEGATIONS**

7 **A. THE FACEBOOK TRACKING PIXEL**

8 8. Facebook is a social networking company where users are required to
 9 identify themselves by “the name they go by in everyday life.”¹ To create a Facebook
 10 account, a user must provide first name, last name, date of birth and gender.²

11 9. Facebook generates revenue by selling advertising space on its website
 12 based upon its ability to identify user interests.³ Facebook can identify user interests by
 13 monitoring “offsite” user activity, which allows Facebook to judge user interests beyond
 14 what users freely disclose.⁴

15 10. Facebook enables advertisers to identify “people who have already shown
 16 interest in [their] business”, which Facebook calls “Custom Audiences.”⁵ The Custom
 17 Audiences tool requires advertisers to supply user data to Facebook, and most do so via
 18 the Facebook Tracking Pixel.⁶

19 ¹ FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND
 20 AUTHENTICITY,
https://www.facebook.com/communitystandards/integrity_authenticity (last visited
 21 December 15, 2022).

22 ² FACEBOOK, SIGN UP, <https://www.facebook.com/> (last visited December 15,
 2022).

23 ³ FACEBOOK, WHY ADVERTISE ON FACEBOOK,
<https://www.facebook.com/business/help/20502906038706> (last visited December 15,
 2022).

24 ⁴ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO
 WILL LOVE
 YOUR BUSINESS, <https://www.facebook.com/business/ads/ad-targeting> (last visited
 December 15, 2022).

25 ⁵ FACEBOOK, ABOUT EVENTS CUSTOM AUDIENCE,
<https://www.facebook.com/business/help/366151833804507?id=300360584271273>
 (last visited December 15, 2022).

26 ⁶ FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE,
<https://www.facebook.com/business/help/170456843145568?id=2469097533764> 94
 (last visited December 15, 2022); FACEBOOK, CREATE A WEBSITE CUSTOM

Continued on the next page

1 11. The Facebook Tracking Pixel is a device included programming code that
 2 advertisers can integrate into their website. Once activated, the Facebook Tracking Pixel
 3 “tracks the people and type of actions they take.”⁷ When the Facebook Tracking Pixel
 4 captures an action, it sends a record to Facebook, which Facebook then assimilates into
 5 the Custom Audiences dataset.

6 12. Advertisers control what actions—or, as Facebook calls it, “events”—the
 7 Facebook Tracking Pixel will collect, including the website’s metadata, along with what
 8 pages a visitor views.⁸

9 13. Advertisers control how the Facebook Tracking Pixel identifies visitors. The
 10 Facebook Tracking Pixel is configured to automatically collect “HTTP Headers” and
 11 “Pixel-specific Data.”⁹ HTTP Headers collect “IP addresses, information about the web
 12 browser, page location, document, referrer and persons using the website.”¹⁰ Pixel-
 13 specific Data includes “the Pixel ID and cookie.”¹¹

14 **B. GRACOBABY.COM AND THE FACEBOOK PIXEL**

15 14. Part of Defendants’ business plan involves persuading potential customers
 16 to try Graco’s products via the use of videos showing consumers enjoying the products.
 17 As such, Defendants are “video tape service providers” under the VPPA because, as part
 18 of their business, they deliver “prerecorded video” content or other “similar audio visual
 19 materials.”

20 15. Gracobaby.com hosts and delivers content including videos.

21
 22
 23 AUDIENCE,
 24 <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>
 25 (last visited December 15, 2022).

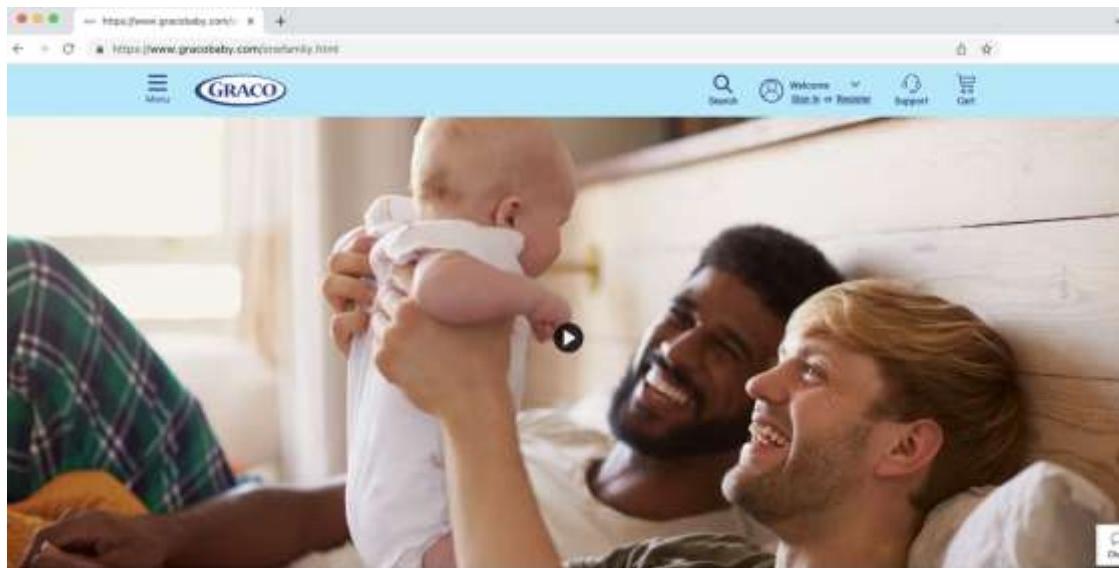
26 ⁷ FACEBOOK, RETARGETING, <https://www.facebook.com/business/oals/retargeting>.
 27 ⁸ See FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING,
 28 ADVANCED, <https://developers.facebook.com/docs/facebook-pixel/advanced/>; see also
 FACEBOOK, BEST PRACTICES FOR FACEBOOK PIXEL SETUP,
<https://www.facebook.com/business/help/218844828315224?id=1205376682832142>
 (last visited December 15, 2022).

29 ⁹ FACEBOOK, FACEBOOK PIXEL, <https://developers.facebook.com/docs/facebook-pixel/> (last visited December 15, 2022).

30 ¹⁰ *Id.*

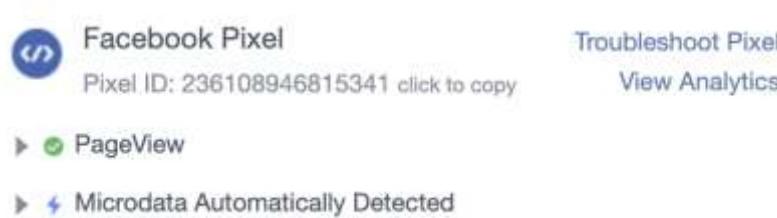
31 ¹¹ *Id.*

1 **Figure 1**



13 16. Gracobaby.com hosts the Facebook tracking Pixel and transmits numerous
14 distinct events to Facebook.¹²

15 **Figure 2**



25 17. Defendants have configured the PageView event to transmit the URL and
26 the category of content selected.

27
28 ¹² This data is derived from a tool created and offered by Facebook.

1 **Figure 3**

2  Facebook Pixel Helper
3 Learn More

4 One pixel found on www.gracobaby.com

5  Facebook Pixel Troubleshoot Pixel
6 Pixel ID: 236108946815341 click to copy View Analytics

7 ▼  PageView

8 DATA PROCESSING PARAMETERS SENT

9 dpo: LDU
dpost: 0
dpoco: 0

10 Since Data Processing Options are sent, custom conversions or
catalog feedback may not work. Learn more

11 EVENT INFO

12 Setup Method: Manual
URL Called: Hide

13 https://www.facebook.com/tr/?id=236108946815341&ev=PageView&dl=https%3A%2F%2Fwww.gracobaby.com%2Fonefamily.html&rl=&if=false&ts=1671633770857&sw=1440&sh=900&ve=2_9_90&r=stphle&a=tm5imo-GTM-WebTemplate&ec=0&o=30&fbp=fb.1.1671037284647.1601918434&it=1671633770800&coo=false&dpo=LDU&dpoco=0&dpost=0&eid=gtm.dom.1671633770302.4&tm=1&rqm=GET&dt=943ewjk6o2qugpxb41a6rc6t22t3j53m

14 Load Time: 70.28 ms
Pixel Location: Show
Event ID: gtm.dom.1671633770302.4

15

16

17

18

19 18. In the above figure, for example, Defendants disclose a webpage's
20 Universal Resource Locator ("URL").

21 19. Microdata discloses the title and other page descriptors.

1 **Figure 4**

2

3  Facebook Pixel Helper [Learn More](#) 

4 One pixel found on www.gracobaby.com

5

6  Facebook Pixel [Troubleshoot Pixel](#)
Pixel ID: 236108946815341 click to copy [View Analytics](#)

7 ►  PageView

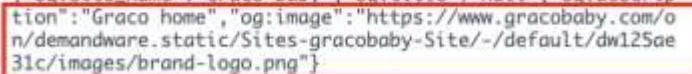
8 ▼  Microdata Automatically Detected

9 CUSTOM PARAMETERS SENT

10 Schema.org: []

11 DataLayer: []

12 OpenGraph: Hide

13 

```
{"og:site_name": "Graco Baby", "og:title": "null", "og:description": "Graco home", "og:image": "https://www.gracobaby.com/on/demandware.static/Sites-gracobaby-Site/-/default/dw125ae31c/images/brand-logo.png"}
```

14 JSON-LD: []

15 Meta: Show

16 20. The “Button Click Automatically Detected” event discloses when the
17 video’s play button is clicked by the visitor along with descriptive information about the
button, page, and video.

1 **Figure 5**

2

3 Facebook Pixel Helper

4 Learn More

5 One pixel found on www.gracobaby.com

6 Facebook Pixel Troubleshoot Pixel

7 Pixel ID: 236108946815341 click to copy View Analytics

8 ▶ ● PageView

9 ▶ + Microdata Automatically Detected

10 ▼ + Button Click Automatically Detected

11 CUSTOM PARAMETERS SENT

```

12           formFeatures: []
13           buttonText: Show
14           buttonFeatures: Hide
15           {"classList": "hero-video-play d-none d-md-inline-block", "de
16           stination": "", "id": "", "imageUri": "", "innerText": "\n
17           \n\n\n\n\n\n\n\n\n\nPlay Video\n\nPlay Video\n\n\n\n\n\n
18           ", "numChildButtons": 0, "tag": "button", "type": null, "name": "p
19           lay", "value": ""}
20           pageFeatures: Show
21           parameters: []
22
23
24
25
26
27
28

```

18 21. The aggregate pixel events (Page View and Microdata Automatically
19 Detected, and Button Click) permit an ordinary person to identify a video's content, title,
20 and location.

21 22. When a visitor watches a video on Gracobaby.com while logged into
22 Facebook, Defendants compel a visitor's browser to transmit the c user cookie to
23 Facebook. The c user cookie contains that visitor's unencrypted Facebook ID. When
24 accessing the above video, for example, Defendants compelled the browser to send eight
25 cookies:

1 **Figure 6**

Name	Value	Domain
xs	15%3At1-aFvI8p-mpiw%3A2%3A167...	.facebook.com
c_user	100087271304389	.facebook.com
datr	ErdeY8DwZw6OUY5T3qHVChfr	.facebook.com
sb	Z7VeY5082dzpP0ecvF3j2thu	.facebook.com
dpr	2	.facebook.com
presence	C%7B%22t3%22%3A%5B%5D%2C...	.facebook.com
wd	1440x726	.facebook.com
fr	0iLmxmGApZkrtQX6F.AWXV7l9ls0Hr7...	.facebook.com

8 23. When a visitor's browser has recently logged out of Facebook, Defendants
 9 will compel the browser to send a smaller set of cookies:

10 **Figure 7**

Name	Value	Domain
locale	en_US	.facebook.com
datr	ErdeY8DwZw6OUY5T3qHVChfr	.facebook.com
sb	Z7VeY5082dzpP0ecvF3j2thu	.facebook.com
dpr	2	.facebook.com
wd	1440x726	.facebook.com
fr	0iLmxmGApZkrtQX6F.AWWWeKwbvT...	.facebook.com

17 24. The fr cookie contains an encrypted Facebook ID and browser identifier.¹³
 18 The datr cookie also identifies a browser.¹⁴ Facebook, at a minimum, uses the fr cookie
 19 to identify particular users.¹⁵

21 25. The _fbp cookie contains, at least, an unencrypted value that uniquely
 22 identifies a browser.¹⁶ As with the fr cookie, Facebook uses the _fbp cookie to identify
 23 users.

24 ¹³ DATA PROTECTION COMMISSIONER, FACEBOOK IRELAND LTD, REPORT
 25 OF RE-AUDIT (Sept. 21, 2012), http://www.europe-v.facebook.org/ODPC_Review.pdf
 (last visited December 15, 2022).

26 ¹⁴ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policy/cookies/> (last visited December 15, 2022).

27 ¹⁵ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policy/cookies/> (last visited December 15, 2022).

28 ¹⁶ FACEBOOK, CONVERSION API,
<https://developers.facebook.com/docs/marketingapi/conversions-api/parameters/fbp-and-fbc/> (last visited December 15, 2022).

1 **Figure 8**

Name	Value	Domain
_fbp	fb.1.1671635225566.710239774	.gracobaby.com

5 26. The Facebook Tracking Pixel uses both first- and third-party cookies. A
 6 first-party cookie is “created by the website the user is visiting”—i.e., Gracobaby.com.¹⁷
 7 A third-party cookie is “created by a website with a domain name other than the one the
 8 user is currently visiting”—i.e., Facebook.¹⁸ The _fbp cookie is always transmitted as a
 9 first-party cookie. A duplicate _fbp cookie is sometimes sent as a third-party cookie,
 10 depending on whether the browser has recently logged into Facebook.

11 27. Facebook, at a minimum, uses the fr, _fbp, and c_user cookies to link to
 12 Facebook IDs and corresponding Facebook profiles.

13 28. A Facebook ID is personally identifiable information. Anyone can identify
 14 a Facebook profile—and all personal information publicly listed on that profile—by
 15 appending the Facebook ID to the end of Facebook.com.

16 29. Through the Facebook Tracking Pixel’s code, these cookies combine the
 17 identifiers with the event data, allowing Facebook to know, among other things, what
 18 Gracobaby.com videos a user has watched.¹⁹

19 30. By compelling a visitor’s browser to disclose the c_user cookie alongside
 20 event data for videos, Defendants knowingly disclose information sufficiently permitting
 21 an ordinary person to identify a specific individual’s video viewing behavior.

22
 23
 24
 25 ¹⁷ PC MAG, FIRST-PARTY COOKIES,
 https://www.pc当地.com/encyclopedia/term/first-party-cookie (last visited December 15,
 26 2022). This is confirmable by using developer tools to inspect a website’s cookies and
 track network activity.

27 ¹⁸ PC MAG, THIRD-PARTY COOKIES,
 https://www.pc当地.com/encyclopedia/term/third-party-cookie (last visited December
 28 15, 2022). This is also confirmable by tracking network activity.

19 FACEBOOK, GET STARTED, https://developers.facebook.com/docs/meta-pixel/get-started (last visited December 15, 2022).

1 31. By compelling a visitor’s browser to disclose the fr and _fbp cookies
 2 alongside event data for videos, Defendants knowingly disclose information sufficient to
 3 permit an ordinary person to identify a specific individual’s video viewing behavior.

4 32. By compelling a visitor’s browser to disclose the fr cookie and other browser
 5 identifiers alongside event data for videos, Defendants knowingly disclose information
 6 sufficiently permitting an ordinary person to identify a specific individual’s video
 7 viewing behavior.

8 33. Facebook confirms that it matches activity on Gracobaby.com with a user’s
 9 profile. Facebook allows users to download their “off-site activity,” which is a “summary
 10 of activity that businesses and organizations share with us about your interactions, such
 11 as visiting their apps or websites.”²⁰ The off-site activity report confirms Defendants
 12 identify an individual’s video viewing activities.

13 **C. EXPERIENCE OF PLAINTIFF**

14 34. Plaintiff is a consumer privacy advocate with dual motivations for watching
 15 a video on Defendants’ Website. First, Plaintiff was genuinely interested in learning
 16 more about the goods and services offered by Defendants. Second, Plaintiff is a “tester”
 17 who works to ensure that companies abide by the privacy obligations imposed by federal
 18 law. As someone who advances important public interests at the risk of vile personal
 19 attacks, Plaintiff should be “praised rather than vilified.” *Murray v. GMAC Mortgage*
 20 *Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

21 35. In enacting the VPAA, Congress intentionally chose to extend its
 22 protections to all persons who watch videos, not simply those who purchase them or
 23 claim pecuniary loss. As such, statutes like the VPPA are largely enforced by civic-
 24 minded “testers” such as Plaintiff. *See Tourgeaman v. Collins Fin. Servs., Inc.*, 755 F.3d
 25 1109 (9th Cir. 2014) (explaining why testers have Article III standing and generally

26
 27 ²⁰ See <https://www.facebook.com/help/2207256696182627> (Off-Facebook Activity is
 28 only a “summary” and Facebook acknowledges “receiv[ing] more details and activity
 than what appears in your Facebook activity.” What is more, it omits “information we’ve
 received when you’re not logged into Facebook, or when we can’t confirm that you’ve
 previously used Facebook on that device.”) (last visited December 15, 2022).

²¹ discussing value and importance of testers in enforcement of consumer protection and civil rights statutes).

3 36. During the class period, Plaintiff visited Gracobaby.com and watched one
4 or more videos.

5 37. When Plaintiff watched videos on Gracobaby.com, Defendants disclosed
6 event data, which recorded and disclosed the video's title, description, and URL.
7 Alongside this event data, Defendants also disclosed identifiers for Plaintiff, including
8 the c_user and fr cookies. In other words, Defendants did exactly what the VPPA
9 prohibits: they disclosed Plaintiff's video viewing habits to a third party.

10 38. Given the nature of Defendants' business, visitors would be shocked and
11 appalled to know that Defendants secretly disclose to Facebook all of key data regarding
12 a visitors' viewing habits.

13 39. Defendants' conduct is illegal, offensive, and contrary to visitor
14 expectations: indeed, a recent study conducted by the Electronic Privacy Information
15 Center, a respected thought leader regarding digital privacy, found that: (1) nearly 9 in
16 10 adults are "very concerned" about data privacy, and (2) 75% of adults are unaware of
17 the extent to which companies gather, store, and exploit their personal data.

18 40. By disclosing his event data and identifiers, Defendant disclosed Plaintiff's
19 personally identifiable information ("PII") to a third-party.

CLASS ALLEGATIONS

21 41. Plaintiff brings this action individually and on behalf of all others similarly
22 situated (the “Class”) defined as follows:

1 **All persons in the United States who watched video content on**
2 **Gracobaby.com and whose PII was disclosed by Defendants to**
3 **Facebook during the Class Period.**

4 **42. Numerosity (Fed. R. Civ. P. 23(a)(1)):** At this time, Plaintiff does not know
5 the exact number of members of the aforementioned Class. However, given the
6 popularity of Defendant's website, the number of persons within the Class is believed to
7 be so numerous that joinder of all members is impractical.

8 **43. Commonality and Predominance (Fed.R.Civ.P. 23(a)(2), 23(b)(3)):**
9 There is a well-defined community of interest in the questions of law and fact involved
10 in this case. Questions of law and fact common to the members of the Class that
11 predominate over questions that may affect individual members of the Class include:

- 12 a) whether Defendants collected Plaintiff's and the Class's PII;
- 13 b) whether Defendants unlawfully disclosed and continues to disclose their
14 users' PII in violation of the VPPA;
- 15 c) whether Defendants' disclosures were committed knowingly; and
- 16 d) whether Defendants disclosed Plaintiff's and the Class's PII without
17 consent.

19 **44. Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiff's claims are typical of those
20 of the Class because Plaintiff, like all members of the Class, used Gracobaby.com to
21 watch videos, and had PII collected and disclosed by Defendants.

22 **45. Adequacy (Fed. R. Civ. P. 23(a)(4)):** Plaintiff has retained and is
23 represented by qualified and competent counsel who are highly experienced in complex
24 consumer class action litigation. Moreover, Plaintiff is able to fairly and adequately
25 represent and protect the interests of the Class.

26 **46. Superiority (Fed. R. Civ. P. 23(b)(3)):** A class action is superior to other
27 available methods for the fair and efficient adjudication of this controversy because
28 individual litigation of the claims of all members of the Class is impracticable. Even if

1 every member of the Class could afford to pursue individual litigation, the court system
 2 could not. It would be unduly burdensome to the courts in which individual litigation of
 3 numerous cases would proceed. Individualized litigation would also present the potential
 4 for varying, inconsistent, or contradictory judgments, and would magnify the delay and
 5 expense to all parties and to the court system resulting from multiple trials of the same
 6 factual issues. By contrast, the maintenance of this action as a class action, with respect
 7 to some or all of the issues presented herein, presents few management difficulties,
 8 conserves the resources of the parties and of the court system and protects the rights of
 9 each member of the Class. Plaintiff anticipates no difficulty in the management of this
 10 action as a class action.

CAUSE OF ACTION

VIOLATION OF THE VIDEO PRIVACY PROTECTION ACT

18 U.S.C. § 2710, *et seq.*

14 47. Defendants are “video tape service providers” that create, host, and deliver
 15 videos on The Website, thereby “engag[ing] in the business, in or affecting interstate or
 16 foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or
 17 similar audio visual materials.” 18 U.S.C. § 2710(a)(4). Defendants also use the videos
 18 to collect and disclose viewers’ PII so it can later retarget them for advertisements.

19 48. Plaintiff and members of the Class are “consumers” because they have
 20 watched videos on Gracobaby.com. 18 U.S.C. § 2710(a)(1).

21 49. Defendants disclosed to a third party, Facebook, Plaintiff’s and the Class
 22 members’ personally identifiable information. Defendants utilized the Facebook
 23 Tracking Pixel to compel Plaintiff’s web browser to transfer Plaintiff’s identifying
 24 information, like his Facebook ID, along with Plaintiff’s event data, like the title of the
 25 videos he viewed.

26 50. Plaintiff and the Class members viewed videos using Gracobaby.com.

27 51. Defendants knowingly disclosed Plaintiff’s PII because it used that data to
 28 build audiences on Facebook and retarget them for its advertising campaigns.

1 52. Plaintiff and Class members did not provide Defendants with any form of
2 consent—either written or otherwise—to disclose their PII to third parties.

3 53. Defendant's disclosures were not made in the "ordinary course of business"
4 as the term is defined by the VPPA because they were not necessary for "debt collection
5 activities, order fulfillment, request processing, [or] transfer of ownership." 18 U.S.C. §
6 2710(a)(2).

PRAYER FOR RELIEF

8 WHEREFORE, Plaintiff seeks judgment against Defendant, individually and on
9 behalf of all others similarly situated, as follows:

- a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Class;
 - b. For an order declaring that Defendant's conduct violates the VPPA;
 - c. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
 - d. An award of statutory damages under the VPAA;
 - e. An award of punitive damages;
 - f. For prejudgment interest on all amounts awarded;
 - g. For injunctive relief to stop the illegal conduct; and
 - h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees, expenses and costs of suit.

Dated: January 8, 2023

PACIFIC TRIAL ATTORNEYS, APC

By: Scott J. Ferrell
Scott. J. Ferrell
Attorneys for Plaintiff